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ENERGY DEPARTMENT

ORDER

The 20th February 2009

No. 1843—R. & R.-II.-3/2009—In exercise of the powers conferred by Section-164 of the Electricity Act, 2003, the State Government do hereby make the following order conferring powers upon the licensee engaged in the business of supplying of electricity under the provisions of the Act for placing of electric lines or electrical plants for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, namely :—

## Definitions:

In this order, unless the context otherwise requires,—

(a) “Electricity Authority” means head of the licensee and includes any officer empowered by him to perform all or any of the functions for the above purpose under the Electricity Act, 2003;

(b) “Public Officer” means an employee of Government who holds public office; and

(c) “Telegraph” means as defined in the Indian Telegraph Act, 1885.

## Power to Place electric lines and electrical plants :

1. The Electricity Authority may, from time to time, place and maintain an electric line under, over, along or across and electrical plants in or upon any immovable property.

Provided that—

(a) The Electricity Authority shall not exercise the powers conferred by this section except for the purpose of supply of electricity established or maintained by the licensee/ public office or to be so established or maintained.

(b) The licenses/ public office shall not acquire any right other than that of user only in the property under, over, along across, in or upon which the Electricity Authority places any electric lines or electrical plants; and

- (c) except as hereinafter provided, the Electricity Authority shall not exercise those powers in respect of any property vested in or under the control or management of any Local Authority, without the permission of that Authority; and
- (d) in the exercise of the powers conferred by this section, the Electricity Authority shall do as little damage as possible and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

**2. Power to enter on property in order to repair or remove electric lines or electrical plants :**

The Electricity Authority may, at any time, for the purpose of examining, repairing altering or removing any electric line or electrical plants, enter on the property under, over, along, across, in or upon which the line or plants has been placed.

**Provisions applicable to property vested in or under the control or management of Local Authorities.**

**3. Power of Local Authority to give permission under Section-1, clause (c) subject to conditions :**

Any permission given by a Local Authority under Section 1, clause (c), may be given subject to such reasonable conditions as that Authority thinks fit to impose, as to the payment of any expenses to which the Authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or as to the time or mode of execution of any work, or as to any other thing connected with or relevant to any work undertaken by the Electricity Authority under those powers.

**4. Power for Local Authority to require removal or alteration of electrical line or electrical plants :**

When, under the foregoing provisions under this order, an electrical line or electrical plant has been placed by the Electricity Authority under, over, along, across, in or upon any property vested in or under the control or management of a Local Authority, and the Local Authority, having regard to circumstance which have arisen since the electric line or electrical plants so placed, considers it expedient that it should be removed or that its position should be altered, the Local Authority may require the Electricity Authority to remove it or alter its position, as the case may be.

**5. Power to alter position of gas or water pipes or drains :**

The Electricity Authority may, for the purpose of exercising the powers by this order in respect of any property vested in or under the control or management of a Local Authority, alter the position thereunder of any pipe (not being a main) for the supply of gas or water, or of any drain (not being a main drain);

Provided that—

- a. when the Electricity Authority desires to alter the position of any such pipe or drain it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so to the Local Authority and when the pipe or drain is not under the control of the Local Authority, to the person under whose control the pipe or drain is;
- b. a Local Authority or person receiving notice under clause (a) may send a person to superintend the work and the Electricity Authority shall execute the work to the reasonable satisfaction of the person so sent.

**6. Disputes between Electricity Authority and Local Authority :**

- (1) If any dispute arises between the Electricity Authority and the Local Authority in a consequence of the Local Authority refusing the permission referred to in Section-1, clause (c), or prescribing any condition under Section-3, or in consequence of the Electricity Authority omitting to comply with a requisition made under Section-4, or otherwise in respect of the exercise of the powers conferred by this order it shall be determined by such Officer as the State Government may appoint either generally or specially in this behalf.
- (2) An appeal from the determination of the Officer so appointed shall lie to the State Government and the order of the State Government shall be final.

**Provisions applicable to other property :**

**7. Exercise of powers conferred by Section-1, and disputes as to compensation, in case of property other than that of a Local Authority :**

- (1) If the exercise of the powers mentioned in Section-1 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the Electricity Authority shall be permitted to exercise them.
- (2) If, after the making of an order under sub-section(1), any person resists the exercise of those powers, or having control over the property, does not give all facilities for this being exercised, he shall be deemed to have committed an offence under Section-188 of the Indian Penal Code, (45 of 1860).
- (3) If any dispute arises concerning the sufficiency of the compensation to be paid under Section-1, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situated, be determined by him.

- (4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the Electricity Authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.
- (5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the Electricity Authority, from the person who has received the same.

**8. Removal or alteration of electric line or electrical plants on property other than that of a Local Authority :**

- (1) When, under the foregoing provisions of this order, a electrical line or electrical plant has been placed by the Electricity Authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a Local Authority , and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the electric line or electrical plants should be removed to another part thereof or to a higher or lower level or altered in form, he may require the Electricity Authority to remove or alter the line or plants accordingly:

Provided that, if compensation has been paid under Section-1, clause (d) he shall, when making the requisition tender to the Electricity Authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

- (2) If the Electricity Authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situated to order the removal or alteration.
- (3) A District Magistrate receiving an application under sub-section (2) may in his discretion reject the same or make an order, absolutely or subject to conditions, for the removal of the electric line or plants to any other part of the property or to higher or lower level or for the alteration of its form; and the order so made shall be final.

## **Provisions applicable to all property**

### **9. Removal of trees interrupting telegraphic communication :**

- (1) If any trees standing or lying near a electric line interrupts, or is likely to interrupt, supply or electricity or its telegraphic communication, a Magistrate of the first or second class may, on the application of the Electricity Authority, cause the tree to be removed or dealt with in such other way as he deems fit.
- (2) When disposing of an application under sub-section (1), the Magistrate shall in the case of any tree in existence before the electric the line was placed, awarded to the persons interested in the tree such compensation as he thinks reasonable, and this shall be final.

### **10. Electric lines and Electrical plants placed before passing of this Act :**

Every electric line or electrical plant placed before the passing of this order under, over, along, across, in or upon any property, for the purposes of a power system established or maintained by the (State Government / State Electricity Board), shall be deemed to have been placed in exercise of the powers conferred by, and after observance of all the requirement of, this order.

#### **10-A. Person exercising legal right likely to damage power system or interfere with its telegraphic communication to give notice:**

- (1) Any person desiring to deal in the legal exercise of a right with any property in such a manner as is likely to cause damage to a electric line or electrical plant which has been duly placed in accordance with the provisions of this order, or to interrupt or interfere with supply of electricity or its telegraphic communication, shall give not less than one month's notice in writing of the intended exercise of such right to the Electricity Authority, or to any Officer whom the Electricity Authority may empower in the behalf.
- (2) If any such person without having complied with the provisions of sub-section (1) deals with any property in such a manner as is likely to cause damage to any electrical line or electrical plants, or to interrupt or interfere with power system or its telegraphic communication, a Magistrate of the first or second class may, on the application of the Electricity Authority, order such person to abstain form dealing with such property in such manner for a period not exceeding one month from the date of his order and forthwith to take such action with regard to such property as may be in the opinion of the Magistrate necessary to remedy or prevent such damage, interruption or interference during such period.

- (3) A person dealing with any property in the manner referred to in sub-section (1) with the *bona fide* intention of averting imminent danger of personal injury to himself or any other human being shall be deemed to have complied with the provisions of the said sub-section if he gives such notice of the intended exercise of the right as is in the circumstances possible, or where no such previous notice can be given without incurring the imminent danger referred to above, if he forth with gives notice of the actual exercise of such right to the Authority of Officer specified in the said sub-section.

By order of the Governor

P. K. JENA

Commissioner-*cum*-Secretary to Government